IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 139 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT,THROUGH L.K. PATEL - Applicant(s)
Versus
PATEL KALPESHKUMAR MAGANLAL & 6 - Respondent(s)

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Appearance :
MS NANDINI JOSHI Ld. APP for Applicant(s) : 1,
MR MEHUL SHARAD SHAH for Respondent(s) : 1 - 7.
MRS NILIMA M SHAH for Respondent(s) : 1, 7,

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 21/04/2006

ORAL JUDGMENT

1. Rule. Mr. Mehul Sharad Shah ld. Advocate waives service of rule on behalf of respondents.

2. The petitioner-State has preferred the present revision application under sec. 397 read with sec. 401 of CrPC to quash and set aside the order passed by Ld. Chief Judicial Magistrate, Patan in Criminal Case No. 1499/2002 on 4.11.2004 below ex. 31. It is submitted that the Criminal Case No. 1499/2002 was filed before the Ld. Chief Judicial Magistrate, Patan on the strength of the complaint filed by Food Inspector L.K. Patel against the respondents for the breach of sec. 7(1), 7(2) as well as 7(5) of the Prevention of Food Adulteration Act and violating of the rules 49(28) and 50 framed thereunder.

3. As per the case of the prosecution, the complainant visited the office of Joy Minerals at about 11.00 O'clock in the presence of panch witnesses and the respondents no. 1 on behalf of respondent no. 7 Joy Minerals, were present. They were dealing with the mineral water and on inquiry, the complainant came to know that they were producing and selling drinking water in the name and style of Joy Packaged Drinking Water. As per the prosecution case, after serving the notice, the complainant purchased 33 pouches of Joy Packaged Drinking Water at the cost of 30 paise per pouch and had paid Rs. 9.90 paise for the same. The sample of the packaged

drinking water was sent to Public Analyst for the purpose of having complete analysis. On the basis of the report of Public Analyst, it was found that the sample of drinking water was not in conformity with the standard and provisions contained in the Prevention of Food Adulteration Act and the rule 49(28) of the Rules framed thereunder. The complainant obtained necessary sanction and registered the complaint against the respondents before the Court of Chief Judicial Magistrate, Patan. The respondents, thereafter vide ex. 31 preferred an application for discharge before the ld. Judge on 10.11.2003. The Ld. Judge, vide order dated 4.11.2004 allowed the application preferred by the respondents and discharged them for the offence punishable under sec. 7(1)(2) and (5) of the Prevention of Food Adulteration Act as well as Rule 49(28) of the Rules framed thereunder. The State being aggrieved by the aforesaid order, has preferred the present revision application.

1.4. It is contended by the ld. APP on behalf of the State that the order passed by the ld. Judge is contrary to law and evidence on record and it is against the settled legal principle and, therefore, the same is required to be quashed and set aside. The Ld.

Judge passed the order on the basis of inferences not warranted by the facts of the case and, therefore, it is liable to be set aside. It is submitted that the ld. Judge failed to appreciate the contentions raised by the State in its true perspective while discharging the respondent. The Ld. Judge has also not taken into consideration the provisions of Food Adulteration Act and the Rules framed thereunder while discharging the respondents. Thus, the ld. APP submitted that the order passed by the ld. Judge is required to be quashed and set aside.

5. As against the aforesaid submission, ld. Advocate representing the respondents submitted that the ld. Judge has after appreciating the documents placed before him passed the order discharging the respondents and it does not call for any interference by this court in a revision application preferred by the State under sec. 397 read with sec. 401 of CrPC. The Ld. advocate further placed reliance on the report of the Public Analyst as well as the report submitted by the Director of Central Food Laboratory and submitted that in view of the provisions contained in sub-section 3 of Section 13, the certificate issued by Director of Central Food Laboratory will

supersede the report given by the Public Analyst under sub sec. (1) and, therefore, the ld. Judge has rightly discharged the respondents. Ld. Advocate after placing reliance on the detailed affidavit in reply filed on behalf of respondents submitted that the respondents no. 2, 3 and 6 were retired long back on 30.9.2001 and by mistake old partnership deed dated 26.7.1996 was handed over to the Food Inspector. The complaint was filed against all the partners of the firm existing as well as retired through mistake and, therefore, respondents no. 2,3 and 6 are rightly discharged by the ld. Judge. As per the submission of ld. Advocate, the complainant asked for the licence but the licence was sent to Patan Nagarpalika for renewal. The receipt given by Patan Nagarpalika has been produced by the respondents and as the licence for renewal was pending before the Patan Nagarpalika, they cannot held liable. The ld. Advocate further placed reliance on the receipt given by the Patan Nagarpalika, produced on page 49, the licence which was issued by the Patan Nagarpalika from 1.4.2003 to 31.3.2004 and produced on page 40 in support of submission that when the actual raid was carried out on 10.4.2003 the licence was sent to Patan Nagarpalika for renewal and, therefore, the respondents were rightly not

held responsible by the ld. Judge. The ld. Advocate also placed reliance on the circular issued by Commissioner, Food and Drugs Control Bureau, Gandhinagar dated 22.4.2002 and circulated on the same day. The incident in question took place on 10.4.2002 and, therefore, the respondents could not be held liable for the alleged offence. The learned advocate further submitted that even on perusal of definition of 'Food' under Section 2(v) of the Prevention of Food Adulteration Act water would not be covered under the said definition and therefore false case is foisted on the petitioner. Ld. Advocate on the basis of the averments made in the affidavit in reply filed on behalf of the respondents at ex. 32, submitted that the ld. Judge has rightly discharged the respondents and as the State has not made out a case for interference under sec. 397 read with sec. 401 of CrPC, the revision application is liable to be rejected out of hand.

6. Heard ld. APP Ms. Nanadini Joshi for the Petiitoner-State and Mr Mehul Sharad Shah ld. Advocate for the respondents. I have taken into consideration the reasons assigned by the ld. Judge in the order passed below ex. 31 in Criminal Case No. 1499/2002 dated 4.11.2004. The complainant lodged the complaint on an inquiry being made

by him at the office of Joy Minerals on 10.4.2002 that the Packaged Drinking Water produced by Joy Minerals is contaminated or adulterated and, therefore, after issuing the notice, he purchased 33 pouch of Joy Packaged Drinking Water ant the cost of 30paise per pouch and paid Rs. 9.90ps to the respondents. Thereafter, the sample of the packaged drinking water was sent to Public Analyst for the purpose of obtaining detailed report of analysis and on the basis of the report of the Public Analyst ,it was found that the sample of drinking water was not in conformity with the standard as prescribed in the Prevention of Food Adulteration Act as well as the Rules framed thereunder. The Ld. Judge has, after considering the provisions of Food Adulteration Act, read with rule 49(28) of the rules held that the respondents are liable to be discharged. The Ld. Judge assigned the reasons in para-8, 9 and 10 of the order and on perusal of the same, it becomes clear that when the complainant visited the firm of the respondents on 10.4.2002, they were not in a possession of the licence, however, the licence was sent for renewal and, therefore, the respondents were awaiting the renewal from the Patan Nagarpalika. In view of the aforesaid circumstances, it has been rightly held by the ld. Judge that the respondents cannot be held liable for

not having the licence renewed from the Patan Nagarpalika. The Ld. Judge has further held that the samples were sent to Central Food Laboratory for the analysis and as per the report, it was found that there was no adulteration in the said samples. The ld. Judge in view of the provisions contained in sec. 13(3) of the Prevention of Food Adulteration Act, 1954, rightly held that the report of Public Analyst can not supersede the report of Central Food Laboratory. Further even the definition of 'Food' as provided under sec.2(v) of the Prevention of Food Adulteration Act does not include water in its embrace and, therefore, the ld. Judge has rightly discharged the accused. The ld. Judge further held that even the respondents have not committed breach of rule 49(28) of the Prevention of Food Adulteration Rules as the circular which was issued by the Director General of Health Services, New Delhi, for the purpose of affixing B.I.S. Mark by each of the firm came into force on 22.4.2002 . The raid in question took place on 10.4.2002 and, therefore, the respondents cannot be said to have committed the breach of the circular issued by the Central Government.

7. In view of the aforesaid facts and circumstances,

the ld. Judge, Patan has discharged all the respondents and taking into consideration the reasons assiged by the ld. Judge, it is not a case which would warrant interference by this court under sec. 397 read with sec. 401 of CrPC and the revision application preferred by the State is liable to rejected.

8. For the foregoing reasons, as the revision application is devoid of merits, the same is hereby rejected. Rule is discharged.

(H.B. ANTANI, J.)

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